

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6507 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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LAXMIBEN REVABEN

Versus

AHMEDABAD FLEXIBLES

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Appearance:

1. Special Civil Application No. 6507 of 1991  
MR MJ SHELAT on behalf of MR GM JOSHI for  
Petitioner Nos. 1-4  
MR KB NAIK on behalf of M/S TRIVEDI & GUPTA  
for Respondent No. 1

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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 05/02/2003

ORAL JUDGEMENT

The present petition is filed against the order

of the Labour Court, Ahmedabad passed on 21-7-1990 in Reference (L.C.A.) No. 903/80, whereby the Labour Court has held that since the respondent company is a cotton textile industry as per the certificate issued on 26-4-1982, the said company is governed by the provisions of Bombay Industrial Relations Act (for short "B.I.R. Act") and hence, the Labour Court has no power to decide the said reference and is not maintainable.

2) It is the case of the petitioner that the petitioners were rendering services to the respondent since more than five years. However, their services were terminated with effect from 28-2-1980 illegally by the respondent without following due procedure of law. The petitioners, therefore, filed a complaint under the provisions of the Industrial Disputes Act and on failure of conciliation the complaint was referred to the Labour Court at Ahmedabad for adjudication by reference (L.C.A.) No.903/1980.

3) The respondent has raised the contention before the Labour Court by producing a letter from the Registrar under BIR Act dated 26-4-1992, registering the respondent concern as a unit under the Industry 'COTTON TEXTILE INDUSTRY', under the provisions of the BIR Act. The said contention was raised before the Labour Court with regard to its jurisdiction and the Labour Court has passed an award on 31-7-1990 deciding that the said reference is not maintainable, as the provisions of the Industrial Disputes Act, 1947 are not applicable to the Respondent-company being Cotton Textile Industry, governed by the B.I.R. Act.

4) Being aggrieved by the said award of the Labour Court, the petitioners have filed the present Special Civil Application before this Court.

5) This Court has admitted this petition on 11-9-1991. Though the respondent company is served and appearance is filed, no affidavit-in-reply is filed on behalf of the respondent company.

6) At the time of final hearing of this petition, Mr.M.J.Shelat on behalf of Mr.G.M.Joshi, the learned advocate appearing for the petitioner submitted that the petitioners' services were terminated on 28-2-1980 and a reference to the Labour Court was filed in April, 1980. The respondent-company has been registered under Section 11 of the BIR Act on 26-4-1982. He has, therefore, submitted that the relevant date on which the cause of action arose is the date on which the services of the

petitioners were terminated and reference was filed before the Labour Court. Since the date on which the reference was filed before the Labour Court, the respondent company was not registered as a unit under the Industry 'COTTON TEXTILE INDUSTRY' under the provisions of BIR Act, the reference filed by the petitioners was governed by the provisions of the Industrial Disputes Act and not by the Bombay Industrial Relations Act, as contended by the respondent - company. He has further submitted that without going into this aspect the Labour Court has wrongly decided the reference against the petitioners by holding that the Industrial Disputes Act is not applicable to the respondent-company.

7) On the other hand, Mr.K.B.Naik appearing on behalf of M/s. Trivedi & Gupta Advocates for respondent company has submitted that it is not correct to state that the Respondent-company was not a Cotton Textile Industry on the date when the services of the petitioners were terminated or Reference was filed before the Labour Court. He has further submitted that the date on which the Labour Court has to decide the reference filed before it and on that date if the Industrial Disputes Act is not applicable to the company, the Labour Court has no jurisdiction to decide the said reference, the same cannot be decided by the Labour Court. Hence, the Labour Court has rightly rejected the reference filed by the petitioner holding that it is not maintainable. He has further drawn my attention to the decision of this Court in the case of Ahmedabad Millowners' Association & Anr. Vs. I.D.Thakore and ors, reported in AIR 1965 Gujarat 112, wherein this Court has taken the view that "the Bombay Industrial Disputes Act, 1938 must be held to be in force immediately before the commencement of the Bombay Industrial Relations Act, 1946 and therefore, it would be Section 2(3) and not Section 2(4) of the latter Act which would apply and therefore no notification under Section 2(4) would be necessary for the application of the Bombay Industrial Relations Act to this cotton textile industry."

8) Mr.Naik has further submitted that the said decision has been challenged before the Hon'ble Supreme Court and it has been held in AIR 1967 SC 1091 that when the Bombay Industrial Relations Act, 1946 came into force on 29th September, 1947, the Bombay Act of 1938 was applicable to the Cotton Industries in Ahmedabad, and consequently under Sub-section (3) of Section 2 of the Act, the Act became applicable to the industry of the appellants and did not require a notification under Sub-section (4) of Section 2 to make it applicable." He

has on the basis of these two judgements submitted that the respondent-company being a unit under the cotton industries, the same is governed by the Bombay Industrial Relations Act and not by the Industrial Disputes Act and hence the Labour Court has no jurisdiction to entertain the reference filed by the petitioners.

9) After having heard the learned advocates appearing for the parties and considering their pleading and authorities cited by them, I am of the view that the respondent-company is a cotton textile industry. Of course, the recognition under Section 11 was granted on 26-4-1982 to the Respondent-company by issuing a certificate. The said certificate was issued during the pendency of the reference before the Labour Court. Once it is held that the respondent-company is a cotton textile industry, it is governed by the provisions contained in the Bombay Industrial Relations Act and when the company is governed by the Bombay Industrial Relations Act, the Industrial Disputes Act is not applicable to the said company and if the provisions of the Industrial Disputes Act are not applicable to the respondent-company, the Labour Court has no jurisdiction to decide the said reference. In this view of the matter, the Labour Court has rightly come to the conclusion that the reference is not maintainable before the Labour Court.

10) I, therefore, see no justification in interfering with the order passed by the Labour Court while exercising the writ jurisdiction under Articles 226 and 227 of the Constitution of India.

The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)

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